

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

June 11, 2008

No. 07-10840
Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

NOEL ROBLES-ROBLES, also known as Victor Ortiz-Cabrera, also known as
Francisco Lopez-Loya

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 6:07-CR-21-1

Before REAVLEY, BENAVIDES, and CLEMENT, Circuit Judges.

PER CURIAM:*

Noel Robles-Robles appeals his guilty plea conviction and sentence for illegal reentry following deportation in violation of 8 U.S.C. § 1326. He argues that the district court plainly erred by determining that his prior conviction under 21 U.S.C. § 841(a)(1) was a "drug trafficking offense" for purposes of U.S.S.G. § 2L1.2(b)(1)(A)(I). We disagree. A comparison of the statute and Guideline at issue shows that a conviction under § 841(a)(1) qualifies as a drug

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

trafficking offense under § 2L1.2(b)(1)(A)(I). See § 841(a)(1), § 2L1.2, comment. (n.1(B)(iv)). Robles-Robles's argument to the contrary is unavailing.

In light of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), Robles-Robles challenges the constitutionality of § 1326(b)'s treatment of prior felony and aggravated felony convictions as sentencing factors rather than elements of the offense that must be found by a jury. His argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224, 235 (1998). *United States v. Pineda-Arrellano*, 492 F.3d 624, 625 (5th Cir. 2007), cert. denied, 128 S. Ct. 872 (2008).

The judgment of the district court is **AFFIRMED**.